

Serial Number 1940/162.



**THE DEBTORS EMERGENCY REGULATIONS 1940.**

GALWAY, Governor-General.

**ORDER IN COUNCIL.**

At the Government House at Wellington, this 31st day of July, 1940.

Present :

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL.

PURSUANT to the Emergency Regulations Act, 1939, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby make the following regulations.

**REGULATIONS.**

**REGULATION 1.—PRELIMINARY.**

(1) These regulations may be cited as the Debtors Emergency Regulations 1940.

(2) These regulations shall come into force on the day following the day on which notification of the making thereof is published in the *Gazette*.\*

(3) The Courts Emergency Powers Regulations 1939 and the Courts Emergency Powers Regulations 1939 (No. 2)† are hereby revoked.

(4) All applications, orders, notices, and generally all acts of authority which originated under the regulations hereby revoked and are subsisting or in force at the commencement of these regulations shall enure for the purposes of these regulations as if they had originated under these regulations, and accordingly shall, where necessary, be deemed to have so originated.

**REGULATION 2.—INTERPRETATION.**

(1) In these regulations, unless the context otherwise requires,—

“The Court” means the appropriate Court as defined by Regulation 6 hereof :

“Lease” means an instrument whereby a leasehold interest in land is created, whether at law or in equity :

\* See end note.

† Statutory Regulations 1939, Serial numbers 1939/176 and 1939/236, pages 755 and 968.

“Member of the Forces” means a person who is for the time being rendering continuous service as a member of any of His Majesty’s Naval, Military, or Air Forces, or who has rendered such service outside New Zealand at any time after the 1st day of September, 1939, whether before or after the commencement of these regulations :

“Dependant of a member of the Forces” means a person who is wholly or partly dependent upon the pay of a member of the Forces or upon a pension payable in respect of the death or disablement of a member of the Forces.

(2) For the purposes of these regulations the owner of the equity of redemption in any property that is subject to a mortgage shall be deemed to be the owner of the property.

(3) For the purposes of these regulations the purchaser within the meaning of the Hire-purchase Agreements Act, 1939, of any goods shall be deemed to be the owner of the goods, and the exercise of a power to take possession of any goods conferred by a hire-purchase agreement shall, unless the purchaser sooner becomes entitled under section 6 of that Act to redelivery of the goods, be deemed to be completed at the expiration of the time within which he can become so entitled.

(4) For the purposes of these regulations the exercise of a power of sale or leasing shall be deemed to be completed when the vendor or lessor becomes bound by an agreement or contract of sale or by a lease, as the case may be.

#### REGULATION 3.—REGULATIONS TO BIND THE CROWN.

These regulations shall bind the Crown.

#### REGULATION 4.—LIMITATION OF RIGHTS OF CREDITORS.

(1) Except with the leave of the Court granted under these regulations, it shall not be lawful for any person to do any of the acts referred to in the next succeeding clause in respect of any other person, or in respect of any property of any other person, if that other person (hereinafter referred to as the debtor)—

(a) Is a member of the Forces or a dependant of a member of the Forces ; or

(b) Has filed in the office of the Court in respect of the act or acts in question a notice in the form in the Schedule hereto or to the effect thereof.

(2) The acts to which this regulation relates are the following :—

(a) To issue or proceed with any writ or warrant for the possession, seizure, or sale of any property, or any writ of attachment, in pursuance of any judgment or order obtained against the debtor (whether before or after the commencement of these regulations) in any Court in its civil jurisdiction, other than a judgment or order for possession of any tenement obtained against any person on the ground that he is a trespasser or that his tenancy has expired, or an order made under the Destitute Persons Act, 1910 :

(b) To issue or proceed with a judgment summons under section 5 of the Imprisonment for Debt Limitation Act, 1908, except in cases in which fraud is alleged against the judgment debtor :

- (c) To obtain an order in favour of a judgment creditor under section 147 of the Magistrates' Courts Act, 1928, or under subsection (5) or subsection (6) of section 52 of the Statutes Amendment Act, 1936 :
  - (d) To have a charging order *nisi* made absolute under Rule 326 of the Code of Civil Procedure in the Second Schedule to the Judicature Act, 1908 :
  - (e) To commence, continue, or complete the exercise of any power of sale or leasing conferred by the Rating Act, 1925 :
  - (f) To file or proceed with a bankruptcy petition or a winding-up petition :
  - (g) To commence or continue proceedings in any Court for the appointment of a receiver of any property :
  - (h) To appoint a receiver of any property :
  - (i) To exercise any power of re-entry conferred by any lease or any power of determining any lease, whether granted before or after the commencement of these regulations :
  - (j) To seize or sell any property by way of distress for rent :
  - (k) To commence or continue to exercise any power to take possession of any goods conferred by a hire-purchase agreement within the meaning of the Hire-purchase Agreements Act, 1939.
- (3) Every application for an order to which paragraph (c) of the last preceding clause relates, and every application to have a charging order *nisi* made absolute shall be deemed to include an application for the leave of the Court under these regulations.

#### REGULATION 5.—GRANTING OF LEAVE BY COURT.

(1) In determining whether leave shall be granted under these regulations to do any act in respect of the debtor or in respect of any property of the debtor, the Court may take into consideration—

- (a) The effect upon the property of the granting of leave :
- (b) The desirability of retaining the debtor in possession of the property :
- (c) The inability of the debtor to perform the obligation in question whether from his own moneys or by borrowing at a reasonable rate of interest or otherwise :
- (d) The conduct of the debtor in incurring the obligation or in respect of any failure by him to perform the obligation :
- (e) The extent to which any default of the debtor has been caused by any economic or financial conditions affecting trade or industry in New Zealand, whether or not they are attributable to any war in which His Majesty may be engaged.

(2) If, having regard to the foregoing considerations and to all other relevant considerations, the Court, upon any application for leave as aforesaid, is of opinion that it is equitable so to do, it may in its discretion either refuse the application or grant it wholly or partly or adjourn it for such period as the Court thinks fit. The granting or adjournment of any application may be either unconditional or upon or subject to such conditions as the Court thinks fit, whether as to the payment by the debtor of any moneys which in the opinion of the Court he is able to pay or otherwise.

## REGULATION 6.—APPROPRIATE COURT.

For the purposes of these regulations the appropriate Court shall be—

- (a) In respect of the acts referred to in paragraphs (a), (b), and (c) of clause (2) of Regulation 4 hereof, the Court in which the judgment or order was obtained or into which it has been removed :
- (b) In respect of the acts referred to in paragraphs (d), (e), and (f) of the said clause (2), the Supreme Court :
- (c) In respect of the acts referred to in paragraph (g) of the said clause (2), the Court in which the proceedings are commenced or to be commenced :
- (d) In respect of the acts referred to in paragraphs (h), (i), (j), and (k) of the said clause (2), the Supreme Court where the value of the property to which the act relates exceeds £2,000, and in every other case either the Supreme Court or a Magistrate's Court.

## REGULATION 7.—PROCEDURE.

(1) Every application to the Supreme Court under these regulations shall be made by motion, and, subject to these regulations, the rules of Court relating to motions shall apply accordingly. Every such motion, if it relates to any proceedings or process in any Registry of the Court, shall be filed in that Registry, and in every other case shall be filed in the Registry of the Court in which a statement of defence would be required to be filed if the motion were a writ of summons naming the debtor as defendant.

(2) Every application to a Magistrate's Court under these regulations shall be made by originating or interlocutory application, as the case may require and, subject to these regulations, the rules of Court relating to originating and interlocutory applications shall apply accordingly.

(3) Every application to any other Court under these regulations shall be made in accordance with the ordinary practice of the Court in interlocutory proceedings or in such manner as the Court may direct or approve.

(4) Every notice by a debtor under Regulation 4 hereof in respect of any act or acts may be filed in any office of the Court in which an application for leave to do that act or those acts may be filed. A copy of every such notice shall, as soon as may be after it is filed, be served on the creditor or other person who is doing or is entitled or intends to do the act or acts to which the notice relates.

(5) No person shall be permitted to do in any Court any of the acts referred to in clause (2) of Regulation 4 hereof unless he produces to the proper officer of that Court an order granting leave to do that act under these regulations or otherwise satisfies the proper officer that such leave has been granted or that the act is one which may be lawfully done without such leave.

(6) No Court fees (except mileage fees for the service of documents) shall be payable in respect of any proceedings under these regulations or in respect of the filing in any Court of any order made under these regulations or of any other document for the purposes of these regulations.

(7) There shall be no appeal from any order made under these regulations.

#### REGULATION 8.—SERVICE OF DOCUMENTS.

(1) Where any notice, application, or other document is required or authorized to be served on any person for the purposes of these regulations, it may be served in accordance with the rules of the Court or by posting it by registered letter addressed to that person at his last known place of abode or business in New Zealand. A document so posted shall be deemed to have been served at the time when the registered letter would in the ordinary course of post be delivered.

(2) If the person is absent from New Zealand, the document may be served as aforesaid on his agent in New Zealand. If he is deceased, the document may be served as aforesaid on his personal representatives.

(3) If the person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no personal representatives, the document shall be served in such manner as may be directed by an order of the Court.

(4) Notwithstanding anything in the foregoing provisions of this regulation the Court may in any case make an order directing the manner in which any document is to be served, or dispensing with the service thereof.

#### REGULATION 9.—GENERAL JURISDICTION OF COURT.

(1) In order that full effect may be given to the intent of these regulations, the Court shall, in every matter coming before it, have full power and jurisdiction to deal with and determine the matter in such manner and to make such order, not inconsistent with these regulations, as it deems just and equitable in the circumstances of the case, notwithstanding that express provision in respect of that matter is not contained herein.

(2) The Court may at any time, upon or subject to such conditions as it thinks fit, discharge wholly or partly any order made by it under these regulations or vary the order in such manner as it deems just and equitable in the circumstances of the case.

#### REGULATION 10.—CONSENT BY DEBTOR TO EXERCISE OF POWERS.

Where any person consents to the doing, in respect of himself or his property, of any act to which Regulation 4 hereof applies (being an act which could have been lawfully done at the time of the consent if the leave of the Court in that behalf had then been obtained), and the consent is in writing witnessed by a solicitor of the Supreme Court, who certifies in writing that he is acting for that

person, and not for the creditor or any other person affected by the transaction, and has fully explained to him the effect of these regulations and of the consent, and that the consent is given by his advice, the leave of the Court to the doing of that act shall, so far as the consent extends, be unnecessary.

REGULATION 11.—NO CONTRACTING OUT.

Except as provided in the last preceding regulation, no covenant, condition, agreement, or consent, whether executed, made, or granted before or after the commencement of these regulations, shall have any force or effect to deprive any debtor of any right, power, privilege, or other benefit provided for by these regulations.

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SCHEDULE.

FORM OF NOTICE BY DEBTOR.

\* In the Supreme Court of New Zealand, ..... District, ..... Registry.

\* In the Magistrate's Court, held at .....

In the matter of the Debtors Emergency Regulations 1940, and

\* In the matter of an action between ....., plaintiff,  
and ....., defendant.

\* In the matter of a lease [or as the case may be] dated  
....., from ..... to ..... affecting  
[Particulars of property].

TAKE NOTICE that I require that the leave of the Court be obtained before you do any of the following acts: [Specify acts and property (if any) affected thereby].

Dated at ....., this ..... day of ....., 194..

Signature : .....

Address for service : .....

To the \* Registrar,  
\* Clerk of the Court, and to [Name of creditor or other person on whom  
notice is to be served].

\* Strike out if inapplicable. In any other Court, intitle the notice in accordance with the rules or practice of the Court.

C. A. JEFFERY,  
Clerk of the Executive Council.

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Issued under the authority of the Regulations Act, 1936.

Date of notification in *Gazette* : 1st day of August, 1940.

These regulations are administered in the Department of Justice.